No. 88-543

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1988

JEAN LEONARD HARRIS, Petitioner

vs.

DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, DEPUTY DISTRICT ATTORNEY DUANE SHINNICK, DISTRICT ATTORNEY INVESTIGATOR HAROLD WAIGHT COUNTY OF SAN DIEGO, RONALD HERPOLSHEIMER, JAMES LORENZ AND MYRON KLARFELD, Respondents

PETITION FOR WRIT OF CERTIORARI

On a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief in Reply to Respondent

JEAN LEONARD HARRIS, Pro Se
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QUESTION PRESENTED

I.

ESTOPPEL SHOULD ONLY APPLY TO ACTUAL EVENTS AND CIRCUMSTANCES.

Respondent Klarfeld suggests that the issue presented by Petitioner is difficult to identify. Further, that whatever issue Petitioner may offer has been deemed to be without merit. Finally, Respondent addressed, in the main, procedure issues resolved when the Clerk of the Supreme Court accepted this Petition as filed.

Petitioner will not address the procedure questions raised by Respondent for reason just stated and the further note that the Brief in Response is itself untimely for reasons similar to those addressed in opposition to the Petition.

The issue presented within this

Petition is simple: to what does estoppel apply. Estoppel should apply only to the real facts established between the parties. The parties should be estopped to deny what really happened- not a fictitious recreation. What really happened between Petitioner and Respondents was the evidence in the record supporting the ordered traversal of the search warrant and the refusal of the court to reconsider that decision.

Respondent's brief suggests that the Municipal Court Judge (Amos) "ultimately" found that Petitioner's Fourth Amendment rights were not violated. Exhibit "C" and "E" to the Petition clearly show that Judge Amos made one order finding Respondents without probable cause to enter Petitioner's office and home and, thereafter, two separate findings relative to the exclusionary rule. The issue is, to which facts or circumstances

is Petitioner, or Respondents, collaterally estopped to deny.

First, Judge Amos made an order granting the motion to traverse and refused to change that order. This order was based upon the true facts that Respondents fabricated the criminal allegation against Petitioner, in the affidavit supporting the search warrant, and kept from Judge Amos, the issuing magistrate, material facts going to prejudice and bias of Respondents against Petitioner. See exhibit "C" to Petition. The only paragraph of the affidavit that supported probable cause for issuance of the warrant was found to be a fabrication. See pgs 307,317,318 of Exhibit "C". That evidence is the true event between Petitioner and Respondents and upon which this 1983 action rests. After this conclusion, Judge Amos then attempted to apply the Federal

Exclusionary rule.

When Judge Amos applied the exclusionary rule, he did so to only two of the three counts. He "supposed" that the criminal charges were not fabricated. Then he suggested "what if" the material omissions had not occurred. On this artificial creation of circumstance, he then created probable cause to admit evidence as to two counts. Note, as to the third count he continued with exclusion but did admit some evidence under the inevitable discovery rule. The inevitable discovery rule is also a judicial creation of circumstance but, unlike the federal exclusionary rule, does not turn on a finding of probable cause. However, the court never uses the inevitable discovery rule without first finding Respondents acted without probable cause.

Of the three conclusions reached by

Judge Amos, why must the estoppel doctrine work against Petitioner on the second of three decisions of Judge Amos? Is it because the second decision was after the first? But there was a third decision after the second and it was a confirmation of Respondent's lack of probable cause. The order of the decisions cannot be the basis of applying estoppel as against Petitioner- or Respondents. A more logical criteria is needed. That criteria should be that Petitioner should be estopped to deny only the true facts and circumstances between he and Respondents.

Petitioner can think on no other circumstance where a party to a judicial proceeding is bound to anything other than the true facts. At the preliminary hearing, Petitioner's attorney fully litigated the true event. Petitioner, the victim of the unconstitutional

conduct, thereby preserved his record for a subsequent civil rights action. Thereafter, Petitioner should not be divested of his civil rights cause of action because of the Municipal Court's erroneous interpretation of the federal exclusionary rule and the court's invention of the events. The preliminary hearing is unique in its opportunity to fictionalize the events between the parties.

"Goldilocks" is estopped to deny that she burgled the house of the "Three Bears". She trespassed, committed malicious mischief within, converted personal property, and was a petty thief. The only thing missing for civil rights liability is state action. Notwithstanding, she should not escape liability simply because the story teller obscures the truth with a fable.

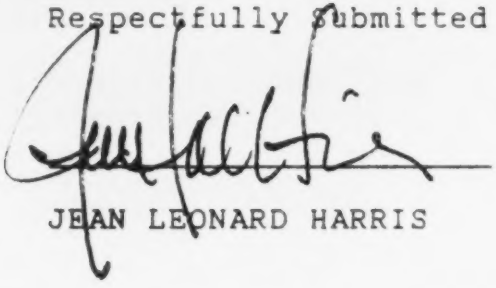
Further, the fable created through

the exclusionary rule should not bar other causes fairly read into the complaint.

CONCLUSION

The merit of this Petition turns, first, on whether the issue is identified. The identity of the issue is clearly stated. Next, is the issue presented of significance relative to civil rights actions. Civil rights actions will certainly become a dead letter if the victim is divested of his claim because of the fictions created to "get the evidence in".

Respectfully submitted



JEAN LEONARD HARRIS

CERTIFICATE OF SERVICE

On November 9, 1988, I served the attached **Brief in Reply to Respondent** re WRIT OF CERTIORARI, on the interested parties in this action, by mailing a coy to the following:

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Executed this 9th day of November, 1988, at Rancho Mirage, California.

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